

STATE OF MICHIGAN
COURT OF APPEALS

DELORES M. HUFF and JACK HUFF,

Plaintiffs-Appellants,

UNPUBLISHED
April 18, 2006

v

ANDRA ELLEN ABOU-JOUDEH and
DOMINION OF CANADA GENERAL
INSURANCE COMPANY,

No. 266120
St. Clair Circuit Court
LC No. 03-003205-NI

Defendants-Appellees.

Before: Fort Hood, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Delores and Jack Huff (collectively referred to as plaintiffs) appeal as of right the trial court's order granting summary disposition under MCR 2.116(C)(1), for lack of personal jurisdiction over defendant Dominion of Canada General Insurance Company. We affirm.

This is a breach of contract action, filed by Canadian residents against their Canadian insurance company, stemming from an accident that occurred in Michigan. Plaintiff Delores Huff was involved in a car crash with Andra Abou-Joudeh (defendant driver) which caused severe injuries to her sternum and several of her vertebrae. Plaintiff filed suit in Michigan against defendant driver for negligence under Michigan's No-Fault Act. This complaint was thereafter amended to add plaintiff's husband, Jack Huff, as a plaintiff and include his loss of consortium claim. It was amended a second time to join their insurance provider, Dominion of Canada General Insurance Company (defendant). The Second Amended Complaint was premised under Michigan law and alleged that defendant failed to insure them for their injuries as a result of the accident with defendant driver, thus breaching its contract with plaintiffs. Defendant filed its motion for summary disposition pursuant to MCR 2.116(C)(1), for lack of personal jurisdiction, MCR 2.116(C)(4), for lack of subject matter jurisdiction, and MCR 2.116(C)(10), for lack of a genuine issue of material fact.

Following a hearing on the motion, the trial court concluded that the evidence presented did not support a finding that defendant purposely availed itself of the privilege of doing business in Michigan. The trial court granted defendant's motion for summary disposition on the basis of personal jurisdiction alone. Plaintiffs appeal this decision as of right. We affirm.

A ruling under MCR 2.116(C)(1) is reviewed de novo.¹ Plaintiffs bear the burden of establishing jurisdiction over defendant; however, a prima facie showing is enough to defeat a motion for summary disposition.² This Court examines all documentary evidence in a light most favorable to the nonmoving party in determining if this burden has been met.³

The Due Process Clause of the Fourteenth Amendment does not allow a state court personal jurisdiction over a business which has no “contacts, ties, or relations” within the forum state.⁴ Jurisdiction is only proper when that defendant enjoys and benefits from the protections of the forum state’s laws.⁵ Plaintiffs aver that defendant is within Michigan’s general personal jurisdiction under MCL 600.711(3) and limited personal jurisdiction under MCL 600.715(1) and (4).

In determining whether a trial court has general personal jurisdiction over a defendant, this Court must consider whether the party has sufficient “minimal contacts” with Michigan.⁶ Plaintiffs aver that defendant has continuously and systematically conducted business in Michigan and therefore the sufficient minimum contacts element is met. Plaintiffs state three reasons for this conclusion: (1) defendant took an active role in the litigation between plaintiffs and defendant driver when it informed plaintiffs how to settle and protect defendant’s subrogation rights; (2) the language of the contract requires defendant to become a participant in all lawsuits; and (3) plaintiffs were required to assign any award against defendant driver, to defendant. However, the evidence presented does not provide sufficient proof warranting general personal jurisdiction over defendant.

The “action” that plaintiffs contend defendant engaged in consists of a series of correspondence between plaintiffs’ counsel and defendant. The correspondence was informational in nature, describing to defendant the extent of plaintiffs’ damages and defendant explaining to plaintiffs the coverage they could expect and the way to protect defendant’s subrogation rights. Additionally, the facts show, and plaintiffs concede, that defendant waived its right to subrogation in this matter.⁷ Looking at these facts, it is clear that defendant never became a party to the lawsuit between plaintiffs and defendant driver. The amount of correspondence, and what was said during that correspondence, does not lead this Court to

¹ *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995).

² *Id.*

³ *Id.*; MCR 2.116(G)(5).

⁴ *Int’l Shoe Co v Washington*, 326 US 310, 319; 66 S Ct 154; 90 L Ed 95 (1945).

⁵ *Id.*

⁶ *Witbeck v Cody's Ranch Inn*, 428 Mich 659, 666; 411 NW2d 439 (1987).

⁷ Footnote 5 of plaintiffs’ brief on appeal provides:

[I]n August of 2005, DOC waived its right to subrogation and indicated to Abou-Joudeh that it would not seek to collect against her.

believe that defendant was consenting to Michigan having jurisdiction over it, or conducting substantial business in Michigan as to say defendant was enjoying or otherwise benefiting from Michigan's laws. Additionally, because defendant waived its right to subrogation, it would be against justice and fair play to hold that defendant is within the purview of Michigan's jurisdiction without becoming a party to protect an interest in the outcome.

Plaintiffs also fail to show that limited personal jurisdiction over defendant is appropriate under Michigan's long-arm statute, MCL 600.715. A two-step analysis is used when determining whether a court in Michigan possesses limited personal jurisdiction over an out-of-state defendant.⁸ First, this Court must determine whether jurisdiction is authorized by Michigan's long-arm statute.⁹ Second, this Court determines if the exercise of jurisdiction complies with the requirements of the Due Process Clause.¹⁰

Plaintiffs aver that Michigan has limited personal jurisdiction under MCL 600.715(1) and (4) because defendant has transacted business within Michigan through its involvement in the suit between plaintiffs and defendant driver and also that defendant contracted to insure a risk in Michigan by covering plaintiffs for accidents occurring in Michigan. Plaintiffs rely on *Sifers v Horen*,¹¹ which holds that under MCL 600.715(1) "any business" means the slightest conduct within the state.¹² Plaintiffs argue that the actions taken by defendant suffice as minimum contacts under this case precedent. Thus, Michigan has jurisdiction.

Although defendant's conduct may very well bring it within the applicability of the long-arm statute, the requirements of due process still invalidate Michigan's limited jurisdiction over defendant. This Court must consider three questions under the due process analysis: (1) has defendant purposefully availed itself of the privilege of conducting activities in Michigan; (2) does the cause of action arise from defendant's activities in the state; and (3) are defendant's activities so substantially connected with Michigan that they make the exercise of jurisdiction over the defendant reasonable?¹³ Here, the record lacks any evidence to show that the cause of action originated from defendant's actions in Michigan or that its conduct was so substantially connected to Michigan that jurisdiction is proper. Therefore, this Court is left only with the language of the contract, which the Michigan Supreme Court held is not enough for a finding of limited personal jurisdiction. See *Khalaf v Bankers and Shippers Ins Co*,¹⁴ where the Court held

⁸ *Aaronson v Lindsay Hauer Int'l Ltd*, 235 Mich App 259, 262; 597 NW2d 227 (1999).

⁹ *Jeffrey*, *supra* at 184-185.

¹⁰ *Id.*

¹¹ 385 Mich 195, 199 n 2; 188 NW2d 623 (1971)

¹² *Id.*

¹³ *Aaronson*, *supra* at 265.

¹⁴ 404 Mich 134; 273 NW2d 811 (1978)

that a nonresident insurance company is not subject to Michigan's limited personal jurisdiction by merely insuring its customers for activities and accidents that may occur in foreign states.¹⁵

For the forgoing reasons, Michigan does not have personal jurisdiction over defendant and the trial court's decision is affirmed.

/s/ Karen M. Fort Hood

/s/ David H. Sawyer

/s/ Patrick M. Meter

¹⁵ *Id.* at 154-155.